



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,501	01/10/2002	Mike Moran	24523-09665	9175

758

7590

11/28/2008

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 11/28/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10043501	1/10/2002	MORAN ET AL.	24523-09665

EXAMINER

KAREN C. TANG

ART UNIT	PAPER
----------	-------

2451 20081110

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

This communication is responsive to the amendment filed on August 24, 2008. Newly submitted claims 40-78 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Group II, Claims 40-78 have separate utility from Group I, claims 1-39 because of "A network monitoring system comprising: a flow processor coupled to the media module, the flow processor classifying the collected data as a priority flow or a non-priority flow and collecting data associated with traffic on a network segment; a capture buffer coupled to the flow processor, the capture buffer including a priority queue and a non-priority queue; an allocation module coupled to the flow processor and the capture buffer, responsive to the flow processor classifying the collected data as a priority flow, the buffer allocation module storing the collected data in the priority queue and responsive to the flow processor classifying the collected data as a non-priority flow, the allocation dynamically modifies a size of the priority queue responsive to a classification of collected data as a priority flow by the flow processor".

Invention I and II are related as subcombination disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable.

In the instant case, invention II has separate utility such as a flow processor coupled to the media module, the flow processor classifying the collected data as a priority flow or a non-priority flow, a capture buffer coupled to the flow processor, the capture buffer including a priority queue and a non-priority queue, the buffer allocation module storing the collected data in the priority queue and responsive to the flow processor classifying the collected data as a non-priority flow, the flow processor classifying the collected data as a non-priority flow, the allocation module dynamically modifies a size of the priority queue responsive to classification of collected data as a priority flow by the flow processor.

Inventor I has separately utilities such as media module coupled to an associated network segment on which the network application is running, the media module monitoring and collecting data relating to traffic on the associated network segment corresponding to the network application for analyzing, responsive to a trigger condition, wherein each media module is tailored for network analysis and is configurable to a monitoring mode or a focus mode to monitor and collect data; and application server coupled to at least one media module and associating a user with the collected data and the analyzed data and generating a user specific log file including the collected data, the analyzed data and the associated user; this is a patentable distinct feature not found in inventor II.

Because these inventions are distinct and the search required for Group II is not required for Group I, restriction for examination as combination and subcombination. Inventions in this relationship are distinct purposes as indicated is proper. The search for the invention of Group II would require considering class 709, subclass 223, while the search for the invention of Group I would not.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively

elected by original presentation for prosecution on the merits. Accordingly, claims 12-24 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since applicant has canceled all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). Applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE. A shortened statutory period for reply to this Election/Restrictions action is set to expire ONE MONTH from the mailing date of this action

/John Follansbee/
Supervisory Patent Examiner, Art Unit 2451